

REMARKS

In response to the Office Action mailed December 28, 2007, Applicant respectfully requests reconsideration. To further the prosecution of this application, amendments have been made in the claims, and each of the rejections set forth in the Office Action has been carefully considered and is addressed below. The claims as presented are believed to be in condition for allowance.

Claims 1-6, 8-10 and 18-39 were previously pending in this application. Claims 1, 9, 10 and 18 are amended herein. No claims have been added or canceled. As a result, claims 1-6, 8-10 and 18-39 remain pending for examination, with claims 1, 9, 10 and 18 being independent. No new matter has been added.

Telephone Interview with Examiner

Applicant's representatives thank Examiner Ly for the courtesies extended in granting and conducting a telephone interview on March 4, 2008. The substance of the interview is summarized herein.

During the interview, Applicant's representatives provided an overview of embodiments of the invention, which relate generally to a portable terminal providing a user the capability to select his or her favorite tunes, and to transmit a list of recommended tunes to another portable terminal (p. 1, lines 9-10). By way of background, Applicant's representatives explained that, while there are various conventional methods which allow users to select favorite tunes, each has drawbacks (p. 1, lines 11-13). For example, a user might listen to a "request" program on the radio, but to ensure they hear a favorite tune, he/she must go to the trouble of requesting that it be played and then might have to listen to the entire broadcast, which might require him/her to endure listening to tunes he/she doesn't like (p. 2, lines 3-17). According to another conventional approach, a user might register his/her favorite music genre with a content provider, so that tunes in the preferred genre might be presented to the user (p. 2, lines 20-24). Registration can be a tiresome chore for many users, and may limit the tune options presented to the user to those in the selected genre (p. 3, lines 1-14).

In view of these drawbacks, some embodiments of the invention provide a portable terminal which offers the user the capability to select his or her favorite tunes and transmit a list of recommended tunes to another portable terminal. In accordance with some embodiments, the reproduction status of each of a plurality of content data items may be detected when each content data item is reproduced, and a recommendation content data item may be selected from the plurality of content data items based on its reproduction status (p. 12, lines 20-23). For example, the reproduction of a particular tune for longer than a predetermined time period, the reproduction of a particular portion of a tune, a tune being reproduced from beginning to end, the reproduction of a particular tune after having been rewound, the reproduction of a tune during a particular time of day, or the reproduction of a tune a predetermined number of times, may cause the tune to be included in a recommended tune list (p. 16, lines 7-15; p.25, lines 14-22). Once generated, a recommended tune list may be transmitted from one portable terminal to another when the portable terminals are within communication range (p. 12, line 23 – p. 13, line 3).

The discussion then turned to the rejection of independent claims 1, 9, 10 and 18 under 35 U.S.C. §103(a) as purportedly being obvious over U.S. Patent Publication No. 2002/0035692 to Moriai in view of U.S. Patent Publication No. 2002/0082917 to Takano (“Takano”).

The Office Action relies upon Moriai to satisfy limitations of claims 1, 9, 10 18 and 35 directed to selecting a recommendation content data item from a plurality of content data items based on its reproduction status. The Office Action’s contentions regarding the disclosure of Moriai were discussed during the interview. For example, Applicant’s representatives explained that Moriai discloses a cellular phone with a clamshell design that is capable of downloading and reproducing content sent from a distribution server (Abstract). The cellular phone is equipped with a controller which, if the phone is closed while it downloads or reproduces content data, causes power to continue to be supplied so that the download or reproduction process can be completed (Abstract). In this respect, the phone is equipped with a detection unit which detects whether the phone’s casing is open or closed (¶[0059]). If the casing is open, the phone is allowed to begin downloading or reproducing content data (¶[0175]). If the casing is then closed, the phone is conferred a status which allows it to continue downloading or reproducing content to completion (¶¶[0180]-[0185]).

Applicant's representatives also pointed out that the portions of Moriai cited by the Office Action simply say nothing at all regarding selecting a recommendation content data item from a plurality of content data items based on its reproduction status. In this respect, the Office Action cites ¶[0097] and ¶¶[0159]–[0161] of Moriai as purportedly satisfying these limitations. During the interview, it was pointed out to the Examiner that ¶[0097] states that the cellular phone includes a decryption unit capable of receiving encrypted content data, decrypting it, and reproducing decrypted content data, that ¶[0159] states that the cellular phone may reproduce decrypted content data, that ¶[0160] states that the encrypted content data may be sent to the phone from a distribution server, which may then use a license key to decrypt and reproduce it, and that ¶[0161] states that content data may be transferred from one cellular phone to another, and that when received, the user may download a license key from a distribution server so that the content may be decrypted.

After this explanation, the Examiner agreed that the cited passages of Moriai say nothing about selecting a content data item from a plurality of content data items depending on a reproduction status of the content data item. The Examiner thus agreed to reconsider the rejection of independent claims 1, 9, 10 and 18 as purportedly being obvious over Moriai in view of Takano.

The Examiner also suggested, however, that clarifying certain limitations recited by the independent claims might help advance prosecution. For example, the Examiner suggested elaborating on what is meant by a "reproduction status." Each of independent claims 1, 9, 10 and 18 has been so amended. In particular, these claims are amended to recite that a reproduction status of a recommendation content data item is selected from a group comprising the recommendation content data item having been reproduced by a reproduction unit for a predetermined period of time, a particular portion of the recommendation content data item having been reproduced by the reproduction unit, the entirety of the recommendation content data item having been reproduced by the reproduction unit, the recommendation content data item having been reproduced by the reproduction unit after being rewound, the recommendation content data item having been reproduced by the reproduction unit during a particular time of day, the recommendation content data item having been reproduced by the reproduction unit a predetermined number of times, and the recommendation content data item having been designated by a user.

The Examiner also suggested clarifying that a list sent from one portable terminal to another includes a plurality of content data items and not just a single recommendation content data item. Each of independent claims 1, 9, 10 and 18 has been so amended.

In view of the amendments to the independent claims, and in view of the Examiner's agreement that the cited references fail to satisfy all of the limitations recited by these claims, Applicant respectfully submits that the claims are in condition for allowance, and requests withdrawal of the rejection of claims 1, 9, 10 and 18, and of the claims which depend respectively therefrom, under 35 U.S.C. §103(a) as purportedly being obvious over Moriai in view of Takano.

Objections to the Drawings

The Office Action maintains several objections to the drawings which had previously been set forth in the Office Action of July 18, 2007 ("the previous Office Action"). In a response to the previous Office Action filed October 18, 2007 (which is incorporated herein by reference), Applicant traversed these objections and set forth detailed arguments as to why the objections were improper. The Office Action fails to answer the material traversed in the response, as required by M.P.E.P. §707.07(f). Applicant respectfully requests that the Office Action respond to the substance of the arguments filed in the previous response or withdraw the objections.

In addition, Applicant notes that while the "Drawings" section beginning on page 4 of the Office Action maintains the objection to the drawings under 37 C.F.R. §1.83(a) for purportedly failing to depict each limitation recited by the independent claims, on page 3, the Office Action also appears to indicate that the "claimed subject matter not in specification" objection was overcome by Applicants previous response (Office Action, p.3). Thus, Applicant respectfully seeks clarification as to the status of each objection to the drawings.

CONCLUSION

If the Examiner believes, after this Response, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below. If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed fee, please charge any deficiency to Deposit Account No. 23/2825. No new matter has been added.

Dated: 3-25-08

Respectfully submitted,

By Randy J. Pritzker
Randy J. Pritzker
Registration No.: 35,986
WOLF, GREENFIELD & SACKS, P.C.
Federal Reserve Plaza
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
617.646.8000